

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE NORMA MINING COMPANY, a Corpora-
tion,

Appellant,

vs.

HUGH MACKAY,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the District
of Arizona.

FILED
APR 20 1919
F. O. MORGENTHAU,
CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

Appearances for Plaintiff (Appellee):

ROBINSON & ROBINSON, 401-2 Interstate
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Appearances for Defendant (Appellant):

GRANT H. SMITH, 657 Mills Building, San
Francisco, California.

*In the District Court of the United States for the
District of Arizona.*

No. E.-6—PRESCOTT—IN EQUITY.

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Bill of Complaint.

To the Honorable Judge of the District Court of the
United States for the District of Arizona:

Hugh Mackay, a citizen of the State of Colorado,
brings this, his bill of complaint against the Norma
Mining Company, a corporation, created, organized
and existing under and by virtue of the laws of the
State of Arizona, and a citizen of said State.

For a first cause of action alleges:

I.

That the plaintiff, Hugh Mackay, is a resident
and citizen of the State of Colorado, residing in the
city and county of Denver in said State.

II.

That the defendant, The Norma Mining Company, during all of the times and at all of the dates hereinafter mentioned, was, has since continuously been and now is a corporation created, organized and existing under and by virtue of the laws of the State of Arizona and is a citizen and resident of said State, as its statutory agent William G. Blakely, whose residence is at Kingman in the county of Mohave in the State of Arizona.

III.

That the defendant, The Norma Mining Company, for a valuable consideration, executed and delivered to the plaintiff on the 2d day [1*] of August, A. D. 1913, its promissory note for the principal sum of Sixteen Thousand Dollars (\$16,000), which said promissory note is in words and figures following, to wit:

“\$16,000. Denver, Colo., Aug. 2d, 1913.

Four months after date, The Norma Mining Company promise to pay to the order of Hugh Mackay Sixteen Thousand Dollars at Denver, Colo.

Value received with interest at six per cent per annum.

THE NORMA MINING COMPANY,

By R. T. ROOT,

President.”

IV.

That at the time of the delivery of said promissory note and to secure the payment of the said

*Page-number appearing at foot of page of original certified Transcript of Record.

principal sum and interest thereon as mentioned in said note according to the tenor thereof, the defendant, The Norma Mining Company, duly executed and delivered to the plaintiff its mortgage deed, bearing date the 2d day of August, A. D. 1913, granting, selling and conveying unto the plaintiff, his heirs and assigns, certain premises described as follows:

The following patented Mining Claims situate, lying and being in the Indian Secret Mining District, in the County of Mohave, and State of Arizona, viz.: The Putman, The Review, The West Half of The Hulda, The Bonita, The Mountain Scenery, The Chief of the Hill, The Monster, The Peer, The Midway Extension, The Garfield Fraction, The Acquarius, The Grand Central, The Western View, The Lone Star, The Blind Goddess, The Desert Prospect, The Goadstick, The Norma Fraction, The G. A. R. Fraction, The Oversight, The Buckley, The Nora R., The Big Joshua, The Lookout, The Abe Lincoln, The Ellington, The Hillside, The Center, The Little Giant, The Midway, The Prince Albert, The Orient, The Squattum, The Horn Silver, The Rip Van Winkle, The African, The Norma, The Garfield, The Schaefer's Treasure, The Fraction Quartz, The Emma, The Nellie Blye, The Occident, The Junction, The G. A. R., and The Daisy Mining Claims, together with the Mill and machinery therein and the different hoisting plants upon the property.

V.

That said mortgage was conditioned that if the interest or the principal of said promissory note shall not be punctually paid when the same shall become due as in said promissory note mentioned, then and in such case the principal sum of said note and the interest thereon shall be deemed and taken to be wholly [2] due and payable and proceedings may forthwith be had for the recovery of the same, either by suit on said note or on said mortgage and note.

VI.

That said mortgage was further conditioned that in any suit or other proceeding that may be had for the recovery of said principal sum and interest thereon, it would be lawful for the mortgagee, the plaintiff herein, his heirs, executors, administrators or assigns to include in the judgment that may be recovered reasonable attorneys' fees.

VII.

That said mortgage was duly acknowledged and was recorded in the office of the Recorder of the county of Mohave in said State of Arizona, on the 29th day of August, A. D. 1914, in Book 4 of Mortgages, at pages 172-173 of the records in said office.

VIII.

That the plaintiff is now the lawful owner of said promissory note and mortgage.

IX.

That default has been made in the payment of the principal and interest of said promissory note and no part thereof has been paid.

X.

That the sum of One Thousand Dollars (\$1,000) would be a reasonable amount to allow to plaintiff as attorneys' fees, to be included in the judgment herein.

XI.

That the plaintiff has no adequate remedy at law in the premises and can have appropriate relief only in a court of equity where matters of the nature set forth in this bill are properly cognizable and relievable. [3]

And for a second cause of action alleges:

I.

That the plaintiff, Hugh Mackay, is a resident and citizen of the State of Colorado, residing in the city and county of Denver in said State.

II.

That the defendant, The Norma Mining Company, during all of the times and at all of the dates hereinafter mentioned was, has since continuously been and now is a corporation created, organized and existing under and by virtue of the laws of the State of Arizona and is a citizen and resident of said State, having as its stationery agent William G. Blakely, whose residence is at Kingman in the county of Mohave in the State of Arizona.

III.

That the defendant, The Norma Mining Company, for a valuable consideration, executed and delivered to the plaintiff on the 31st day of March, A. D. 1914, its two promissory notes for the aggregate principal sum of Five Thousand Dollars (\$5,000), which

said promissory notes are in words and figures following, to wit:

“\$3500.00 Denver, Colo., March 31st, 1914.

On or before May 1st, 1914, after date it promise to pay to the order of Hugh Mackay Thirty-five Hundred Dollars at seven per cent interest per annum.

Without defalcation, for value received.

THE NORMA MINING CO.,

By R. T. ROOT,

President.”

“\$1500.00 Denver, Colo., March 31st, 1914.

On or before May 1st, 1914, after date it promise to pay to the order of Hugh Mackay Fifteen Hundred Dollars at seven per cent interest per annum.

Without defalcation for value received.

THE NORMA MINING CO.

By R. T. ROOT.

President.” [4]

IV.

That at the time of the delivery of said notes and to secure the payment of the principal and interest thereof as therein mentioned according to their tenor, the defendant, The Norma Mining Company, duly executed and delivered to the plaintiff its Mortgage Deed, bearing date the 31st day of March, in the year one thousand nine hundred and fourteen, granting and releasing unto the said plaintiff, and to his heirs and assigns forever all the following described patented mining claims situate lying and being in the county of Mohave and State of Arizona, to wit:

In Indian Secret Mining District in said Mohave County, Arizona, viz.: the Putnam, the Review, the West Half of the Hulda, the Bonita, the Mountain Scenery, the Chief of the Hill, the Monster, the Peer, the Midway Extension, the Garfield Fraction, the Acuarins, the Grand Central, the Western View, the Lone Star, the Blind Goddess, the Desert Prospect, the Goadstick, the Norma Fraction, the G. A. R. Fraction, the Oversight, the Buckley, the Nora R., the Big Joshua, the Lookout, the Abe Lincoln, the Ellington, the Hillside, the Center, the Little Giant, the Midway, the Prince Albert, the Orient, the Squattum, the Horn Silver, the Rip Van Winkle, the African, the Norma, the Garfield, the Schaefer's Treasure, the Fraction Quartz, the Emma, the Nellie Blye, the Occident, the Junction, the G. A. R., and the Daisy Mining Claim; together with all the dips, spurs, and angles, and all the metals, ores, gold and silver bearing quartz, rock and earth therein, the old dump now thereon, and together with the mill and machinery therein and the different hoisting plants on the property.

V.

That said mortgage was conditioned that the defendant pay unto the plaintiff, his executors, administrators or assigns, the sum of money mentioned in said promissory notes with interest thereon and if default be made in the payment of any part thereof that the plaintiff shall have power to sell the premises according to law.

VI.

That default has been made in the payment of the principal and interest of said promissory notes and no part thereof has been paid. [5]

VII.

That the plaintiff is now the lawful owner of said promissory notes and mortgage.

VIII.

That the plaintiff has no adequate remedy at law in the premises and can have appropriate relief only in a court of equity where matters of the nature set forth in this bill are properly cognizable and relievable.

WHEREFORE plaintiff prays:

a. That the said mortgages made by the defendant, The Norma Mining Company, to the plaintiff, Hugh Mackay, may be foreclosed as against the said defendant, The Norma Mining Company, and all persons claiming by, through or under it.

b. That an accounting be had and taken of all of the property and assets of whatsoever kind or character subject to the lien of said mortgages and that said mortgages may be decreed to be valid, liens upon all property covered thereby and therein mentioned and described or intended so to be and that the amounts due and unpaid for the principal of and interest upon said promissory notes may be ascertained and determined.

c. That the plaintiff have judgment against the defendant, The Norma Mining Company in the sum of Twenty-one Thousand Dollars (\$21,000), with interest on Sixteen Thousand Dollars (\$16,000)

from the 2d day of August, A. D. 1913, and on Five Thousand Dollars (\$5,000) from March 31, A. D. 1913, for attorneys' fees and for costs of suit.

d. That the usual decree may be made for the sale of said mortgaged premises according to law and the practice of this court and the proceeds applied in payment of the amount due to the plaintiff.

e. That the plaintiff may become a purchaser at said sale and that the purchaser be let into the possession of the said premises.

f. That the defendant, The Norma Mining Company, and all persons claiming under it, subsequent to the execution of said mortgages [6] upon said premises, either as purchasers, encumbrancers or otherwise, may be barred and foreclosed of all right, claim or equity of redemption in the said premises and every part thereof and that the defendant may be adjudged to pay any deficiency which may remain, after applying all of the proceeds of the sale of said premises properly applicable thereto after the payment of the costs of foreclosure and reasonable attorneys' fees to be fixed by this Honorable Court.

g. That the defendant, The Norma Mining Company, may be required to appear and answer this bill of complaint according to the rules and practice of this Honorable Court.

h. And that the most gracious writ of subpoena of the United States of America be directed to the said defendant, thereby commanding it at a certain time and under certain pain therein to be specified to be and appear in this Honorable Court and then

and there to answer all and singular the premises and stand to and abide such Order and Decree herein as to this Honorable Court shall seem meet.

A. C. BAKER,

ALEXANDER B. BAKER

Solicitors for Plaintiff,

317 Fleming Building, Phoenix, Arizona.

State of Colorado,

City and County of Denver,—ss.

Hugh Mackay, being first duly sworn upon oath, deposes and says, that he is the plaintiff named in the foregoing bill of complaint; that he has read the same and knows the contents thereof and that the same is true of his own knowledge.

HUGH MACKAY.

Subscribed and sworn to before me this 28th day of December, A. D. 1914.

My commission expires September 12, 1917.

[Seal]

RENA A. WOLZ,

Notary Public. [7]

[Endorsed]: Filed Jan. 9, 1915, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [8]

In the District Court of the United States for the District of Arizona.

IN EQUITY.—No. E.-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

The Amended Answer and Cross-bill of the Norma Mining Company, Defendant.

The amended answer of the Norma Mining Company, a corporation, to the bill of complaint filed in the above-entitled cause and to the first cause of action therein alleged respectfully represents and shows:

This defendant reserving all manner of exceptions that may be made to the uncertainties and imperfections of the first cause of action in said bill stated, comes and answers thereto and admits:

I.

The allegations contained in paragraphs 1 and 2 of said first cause of action.

II.

This defendant, The Norma Mining Company, denies that it made, executed or delivered the promissory note set forth in paragraph 3 of said first cause of action and this defendant denies that the president of said defendant at the time of the execution and delivery of said note was authorized by the said defendant to execute the same, and this defendant alleges that if the said note was executed by the said Norma Mining Company by R. T. Root, its president, as alleged in said complaint, said execution and the conditional and limited delivery of said note, as hereinafter set out, was wholly without its authority or consent and out of the course of its regular business and without consideration to the said defendant corporation, [9] and has never been ratified by it.

III.

This defendant denies that it made, executed or delivered to the plaintiff its mortgage deed bearing date the 2d day of August, 1913, as alleged in paragraph 4 of said first cause of action in said bill of complaint contained, or any mortgage deed whatsoever, and that if said mortgage deed was made, executed and delivered to the said plaintiff purporting to be executed by this defendant (which this defendant denies), that such making, execution and delivery was without authority of this defendant, and that such deed was made, executed and delivered without its consent and out of the course of its regular business and without consideration to it, and has never been ratified by it.

IV.

This defendant denies that the sum of One Thousand Dollars (\$1,000) would be a reasonable amount to allow to plaintiff as attorney's fees to be included in the judgment herein.

This defendant, reserving all manner of exceptions that may be made to the uncertainties and imperfections of the second cause of action in said bill stated, comes and answers thereto and admits.

I.

The allegations contained in paragraphs 1 and 2 of said second cause of action.

II.

This defendant, The Norma Mining Company, denies, that it made, executed or delivered the promissory notes set forth in paragraph 3 of said second cause of action, or either of them, and this defendant

denies that the president of said defendant at the time of the execution and delivery of said notes was authorized by the said defendant to execute the said notes, or either of them, and this defendant alleges that if the said notes, or either of them, were executed by the said Norma Mining Company by R. T. Root, its president, as alleged in said bill of complaint, said execution and delivery of [10] said notes was wholly without its authority or consent and out of the course of its regular business and without consideration to the said defendant corporation, and has never been ratified by it.

III.

This defendant denies that it made, executed or delivered to the plaintiff its mortgage deed bearing date the 31st day of March, 1914, as alleged in paragraph 4 of said second cause of action in said bill of complaint contained, or any mortgage deed whatsoever, and if said mortgage deed was made, executed and delivered to the said plaintiff purporting to be executed by this defendant, that such making, execution and delivery was without its consent and out of the course of its regular business and without consideration to it, and has never been ratified by it.

And having fully answered the complainant's bill herein, the defendant by way of counterclaim herein, as to both the mortgage bearing date the 2d day of August, 1913, and the one of the 31st day of March, 1914, set out and referred to in the complainant's bill herein, says that it is informed and believes and therefore alleges that prior to the execution of either and both of said mortgages there had been for a

number of years various personal loans made between the complainant herein and the then president of this defendant, R. T. Root, the latter at times loaning the complainant money or giving him accommodation checks or notes to be by the complainant negotiated for the complainant's use, and at other times the complainant advancing to said R. T. Root money or checks; that at the time of the execution of the first of said mortgages the complainant told said Root he was in great need of money, and begged him to help him by giving him some notes or securities upon which he could raise money, whereupon the said Root, without the authority or knowledge of the Board of Directors of this defendant, and without any consideration of any kind or nature whatsoever moving to this defendant from the complainant, or any person or corporation in his behalf, all of which was well known to the complainant at the time; executed in the name of the corporation and [11] conditionally delivered said mortgage, at the same time taking from the complainant a receipt and agreement under and by the terms of which the said complainant acknowledged that he received the said notes and mortgage for the purpose of selling them, and from the proceeds of such sale to be made within one month, to pay checks then held by said complainant as executor of the estate of George Miller, deceased, aggregating about Ten Thousand Dollars, which checks were signed by said R. T. Root personally, and of the proceeds of which this defendant had received no part; that by the terms of said agreement, so signed by said Mackay, he promised to re-

turn said mortgage and notes to said Root if he had not sold the same within *thirty* from August 2, 1913, and also promised that he would not record said mortgage unless he sold it within the said one month, and that the net balance after paying said checks he would turn over to said Root. That the complainant did not sell said note and mortgage, and this defendant on information and belief avers that contrary to his said agreement, the said Mackay has caused said mortgage to be recorded and contrary to the purpose for which it was delivered is now attempting to foreclose the same and appropriate it to his own use.

This defendant is further informed and believes, and upon such information and belief avers that both said complainant and said Root well knew that neither the stockholders nor the directors of this defendant company had authorized said notes and mortgage, or had any knowledge or information of the issuance of the same; yet they caused to be inserted in such mortgage a statement that the same had been authorized by the directors and stockholders of this defendant, which was contrary to the facts, as both the complainant and said Root well knew, both parties thereto fully understanding that said note and mortgage were wholly unauthorized, but the complainant insisting that it was necessary to have such a recital of authority to induce his special customer whom he named to [12] take the paper, and that said Root could thereafter procure a ratification of his acts in the premises if the sale was made, and if he, the complainant, did not make such sale within one month, the notes and mortgage could

and would be returned to said Root and cancelled, and any ratification by the corporation would be unnecessary, to which said Root assented and the agreement was drawn accordingly.

And on like information and belief this defendant avers that since such unauthorized issuance of said note for \$16,000 and said mortgage, the said R. T. Root has paid and taken up all said checks then held by said complainant as executor, and has given and said complainant has accepted, his, the said R. T. Root's, personal notes therefor and still holds the same, and all said checks have been delivered by the complainant to said R. T. Root and cancelled.

And defendant further says that as to the second and last of said mortgages and the two notes aggregating five thousand dollars by the said mortgage, purporting to be secured, it is informed and believes, and therefore avers, that said notes and mortgage was made by R. T. Root, its then president, upon personal matters and dealings between said Root and the complainant and having no relation to any business or interest of this defendant, and without any consideration moving to this defendant from the complainant or any other person or corporation in his behalf; that said mortgage was executed without the knowledge of authority of the Board of Directors of this defendant; and as defendant avers upon information and belief, at the time the said Root conditionally delivered said two notes and the mortgage purporting to secure the same upon the properties of this company, he received from the complainant a receipt by which said complainant acknowledged that

he had never received from said Root two notes, one for \$3,500 and the other for \$1,500, together with a mortgage for same, executed by the Norma Mining Company on this defendant's property in Mohave County, Arizona; that in and by the terms of said receipt so given at the time the complainant declared and acknowledged that he only received said notes for the purpose of a loan, and covenanted [13] and agreed that if a loan was not made he would return the said notes and mortgage to R. T. Root or to one of the sons of R. T. Root and that if he procured a loan on said notes he would pay the money to one of said sons; that thereafter said Mackay advised said Root that he had only been able to raise the sum of \$1,800 on said two notes, which he had paid to his son W. W. Root, and that thereafter said R. T. Root offered to repay and now stands ready to repay said \$1,800, with all interest, upon the return of said notes and mortgage, and that said Mackay refused to accept such payment or to surrender said notes and mortgage, and still refuses.

And this defendant upon information and belief avers that at the time said two notes aggregating Five Thousand Dollars and the pretended mortgage securing the same were conditionally delivered by said Root to the said complainant, it was fully known to the complainant and he was so advised by the said Root, that said notes and mortgage were unauthorized by the directors and stockholders of the defendant, and the said Mackay agreed that if he did not procure a loan for said \$5,000 on the property he would return both the notes and mortgage to said

Root; that this defendant is not advised whether the \$1,800 so paid by said complainant was procured by the negotiation of one or both of said notes, but avers that in any event the same does not constitute a valid obligation against this defendant.

Whatever may be the rights as between said Root and said Mackay as to the \$1,800, said to have been paid to said W. W. Root, certain it is that this defendant never received anything for or on account of said mortgage and notes, or any or either of them, and is in nowise bound by the same or any of the terms or conditions thereof, and the attempt to use said mortgage in the manner proposed is against equity and good conscience.

And this defendant denies that it ever executed any of the obligations or instruments sued on, and avers that they and none of them are its act or deed, or constitute a valid or existing obligation of this defendant. [14]

WHEREFORE, this defendant asks that all of said notes and mortgages be declared void, that the complainant be required to bring the same into this court to be cancelled, and to release the same of record by proper deed of release to be filed in the county where the property described therein is situate, and default of his so doing that a commissioner be appointed by this court to execute such release in the name of the complainant herein, as that this defendant may have all such other relief herein as to your

Honor may seem just and the rules and practice of equity require.

THE NORMA MINING COMPANY,
By CHAS. W. HOOVER,
Vice-president.

THOS. ARMSTRONG, Jr.,
ERNEST W. LEWIS,
R. L. MORGAN,

310-315 National Bank of Arizona Bldg.,
Phoenix, Arizona.

Solicitors for Defendant.

State of Illinois,
County of Cook,—ss.

Personally appeared before me, the undersigned, a notary public in and for said county and State, Chas. W. Hoover, who being first duly sworn on oath says that he is the vice-president of the Norma Mining Company, Defendant, and has read the above and foregoing amended answer of said company, and knows the contents thereof; that said answer is true except as to matters and things therein stated on information and belief and as to such matters this affiant believes the same to be true.

Witness my hand and notarial seal this 18th day of March, A. D. 1915.

[Seal]

A. G. LOVELESS,
Notary Public.

My commission expires Oct. 10, 1915. [15]

[Endorsed]: Copy received Mch. 31, 1914.

A. C. BAKER,
A. B. BAKER,
Solicitors for Plff.

Filed Mar. 31, 1915, at — M. George W. Lewis,
Clerk. By R. E. L. Webb, Deputy. [16]

*In the District Court of the United States for the
District of Arizona.*

No. E.-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Decree.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED AND DECREED as follows, viz.:

That the defendant, The Norma Mining Company, a corporation organized and existing under the laws of the State of Arizona, for a valuable consideration, executed and delivered to the plaintiff, Hugh Mackay, a resident of the State of Colorado, residing in the City and County of said State, its promissory note for the principal sum of Sixteen Thousand Dollars (\$16,000), bearing date the 2d day of August, A. D. 1913, and payable to the order of the plaintiff, Hugh Mackay, with interest from date at the rate of six per cent per annum, and that the said defendant executed and delivered its mortgage deed of even date with said promissory note conveying to the plaintiff the hereinafter described property to se-

cure the payment of said promissory note with interest thereon, together with the costs and expenses of his suit and a reasonable attorney's fee; and,

That later the said defendant executed and delivered to the plaintiff its two promissory notes bearing date the 31st day of March, A. D. 1914, one of said promissory notes being for the sum of Three Thousand Five Hundred Dollars (\$3,500) and the other for One Thousand Five Hundred Dollars (\$1,500), each of said notes bearing interest from date at the rate of seven per cent per annum and that at the time of the delivery of said notes and to secure the payment of the principal and interest thereon as therein mentioned, the defendant, The Norma Mining Company, executed and delivered to the plaintiff its mortgage deed, bearing even date with said promissory notes upon the property hereinafter [17] mentioned and that as consideration for said two last mentioned promissory notes, the plaintiff paid the sum of Four Thousand Dollars (\$4,000), and that said mortgages are valid and subsisting liens against said mortgaged premises; and,

That the plaintiff, Hugh Mackay, is the present owner and holder of all three of the aforesaid promissory notes, and that there is due and owing to said plaintiff from the defendant upon the first of said promissory notes for principal and interest to this date, February 15, 1916, the sum of Eighteen Thousand Four Hundred Thirty-four Dollars and Sixty-six Cents (\$18,434.66) and that there is due and owing to the plaintiff from the defendant on the last two of said notes for principal and interest to said last-

mentioned date the sum of Four Thousand Five Hundred Twenty-three Dollars and Forty-three Cents (\$4,523.43); and,

That the sum of One Thousand Dollars (\$1,000) is a reasonable fee herein for the attorney of said plaintiff; and,

That default has been made in the payment of the principal and interest of said promissory notes and the plaintiff is entitled to have said mortgages foreclosed and the property therein and hereinafter described sold and that the said mortgaged property and premises hereinafter described are so situated that they cannot be sold except as an entirety, due regard being had to the best interests of those interested in the same; and,

That the mortgaged premises mentioned in said Complaint and described as follows, to wit: the following patented mining claims situate, lying and being in the Indian Secret Mining District in the County of Mohave, and State of Arizona, viz.: The Putman, The Review, The West Half of The Hulda, The Bonita, The Mountain Scenery, The Chief of the Hill, The Monster, The Peer, The Midway Extension, The Garfield Fraction, The Acquarius, The Grand Central, The Western View, The Lone Star, The Blind Goddess, The Desert Prospect, The Goadstick, The Norma Fraction, The G. A. R. Fraction, The Oversight, The Buckley, The Nora R., The Big Joshua, The Lookout, The Abe Lincoln, The Ellington, The Millsite, The Center, The Little Giant, The Midway, The Prince Albert, The Orient, The [18] Squattum, The Horn Silver, The Rip Van Winkle,

The African, The Norma, The Garfield, The Shafer's Treasure, The Fraction Quartz, The Emma, The Nellie Blye, The Occident, The Junction, The G. A. R., and The Daisy Mining Claims, together with all the dips, spurs and angles, and all the metals, ores, gold and silver bearing quartz, rock and earth therein, the old dump now thereon, and together with the mill and machinery therein and the different hoisting plants on the property be sold to raise the amount due to the plaintiff for principal, interest, costs of suit, attorney's fees, fees and expenses of sale, subject to all taxes and assessments against said property, at public auction, to the highest and best bidder at the courthouse in the town of Kingman in the county of Mohave and State of Arizona, by the Special Master appointed to execute this decree after giving public notice of the time and place of said sale by publication of said notice, once a week for at least four weeks prior to said sale in at least one newspaper printed, regularly issued and having a general circulation in said county of Mohave and State of Arizona where the property to be sold is situated, and which Notice shall describe the property to be sold, and that the Special Master making such sale may either personally or by some person to be designated by him to act in his name or by his authority, adjourn the sale from time to time without further advertisement but only upon the request of the plaintiff or his solicitor or by order of the Court or a judge thereof; and,

That the plaintiff herein may become the purchaser at said sale and in case the said plaintiff shall become

such purchaser and shall bid no more than the amount of this decree, he may satisfy and make good his bid by paying any balance unpaid of the costs of suit, attorney's fees, fees and expenses of sale and delivering to said Special Master a receipt for such sum as shall equal the balance of his said bid and in case the said plaintiff shall bid more than the amount of this decree, he may make good his bid up to the amount of the decree in the manner aforesaid and the amount so bid in excess of the amount of the decree shall be paid in cash, and, [19]

That the said Special Master shall report his acts in the premises to the Court with all convenient speed and upon the sale of said premises being confirmed by the Court shall execute his Certificate of Purchase to the purchaser or purchasers thereof, which Certificate shall specify and describe the property purchased by such purchaser or purchasers, the sum bid therefor and the time when the purchaser or purchasers at such sale shall be entitled to a deed for the same if not redeemed as provided by law and said Special Master shall file in the office of the County Clerk and Recorder of said county of Mohave a duplicate of such Certificate of Purchase and out of the proceeds of said sale retain his fees and expenses of such sale after the same shall have been allowed by this court and pay to the officers of this court their costs and out of the remainder pay to the plaintiff his costs in this behalf laid out and expended to be taxed, including said attorney's fees and the sum of Twenty-two Thousand Nine Hundred Fifty-eight Dollars and Nine Cents (\$22,958.09), together with

lawful interest thereon from this date to the date of such sale or if such remainder be insufficient to pay the whole of said amount last named with interest as aforesaid, then he shall apply said remainder to the extent to which it may reach and that the plaintiff shall have a judgment docketed against the defendant for any such deficiency, and that in case said premises shall sell for more than sufficient to pay the sums hereinbefore mentioned to be paid, then he shall, after making payments as aforesaid, bring such surplus money into court without delay to abide the further order thereof; and,

That Edwin F. Jones be and he is hereby designated and appointed Special Master to make the sale herein ordered and decreed and to execute and deliver a Certificate of Purchase to the purchaser or purchasers of said sale as aforesaid and a deed of conveyance to the property, the Court, however, reserving the right to appoint in term time or at Chambers another person, such Special Master with like powers in case of the death or disability to act of the Special Master hereby designated or in case of his resignation or failure to act or removal by the Court; and,

That the said defendant and all persons claiming or to claim [20] through or under it be forever barred and foreclosed of and from all equity of redemption and claim in and to said premises and every part and parcel thereof if the same are not redeemed according to the law of the State of Arizona, and if the same are not so redeemed, then and in that case, upon the production to the said Special Master or to

his successor, duly appointed as herein provided, of the Certificate of Purchase executed as aforesaid to the said Purchaser or Purchasers, the said Special Master or his successor shall make, execute and deliver to the said purchaser or purchasers, his or their representatives or assigns, a good and sufficient conveyance in fee-simple of the said premises and property, and that upon the execution and delivery of the conveyance aforesaid, the title to the said premises and property so conveyed shall be quieted in the purchaser or purchasers against said defendant, its successors and assigns and all persons claiming by, through or under it, them or either of them, and the said purchaser or purchasers or their representatives or assigns, shall be let into possession of the premises so conveyed and that the defendant or any person claiming by, through or under it, who may be in possession of said premises or any part thereof and any person who, since the commencement of this suit has come into possession under it on the production of said Special Master's Deed, shall surrender possession thereof to such purchaser or purchasers, their representatives or assigns.

Dated at Phoenix, this 18th day of March, A. D. 1916.

Done by the Court.

WM. H. SAWTELLE,
District Judge.

[Endorsed]: Filed Mar. 18, 1916, at — M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy.

Mandate U. S. Circuit Court of Appeals.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America,
to the Honorable the Judges of the Dis-
[Seal] trict Court of the United States for the
District of Arizona, GREETING:

Whereas, lately in the District Court of the United States for the District of Arizona, before you, or some of you, in a cause between Hugh Mackay, Plaintiff, and The Norma Mining Company, Defendant, No. E.-33 (Phx.), a decree was duly filed on the 18th day of March, A. D. 1916, in favor of the said plaintiff and against the said defendant, which said decree is of record and fully set out in the said cause in the office of the clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof, and as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by the Norma Mining Company, as appellant and against Hugh Mackay, as appellee agreeably to the Act of Congress in such cases made and provided, fully and at large appears:

And Whereas, on the 1st day of March, in the year of our Lord, One Thousand Nine Hundred and Seventeen, the said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record and was duly submitted:

On Consideration Whereof, It is now here OR-

DERED, ADJUDGED AND DECREED by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ORDERED, ADJUDGED AND DECREED by this Court, that the appellee recover against the appellant for his costs herein expended, and have execution therefor.

(May 7, 1917.)

You, Therefore, are Hereby Comanded— [22]

That such execution and further proceedings be had in the said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 17th day of October, in the year of our Lord, one thousand nine hundred and seventeen.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

Amount of costs allowed and taxed in favor of the appellee and against the appellant as per annexed bill of items, taxed in detail: \$28.45.

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

BILL OF ITEMS ANNEXED TO MANDATE
PURSUANT TO SECTION 5, RULE 31.

Debit

Item No.	DEBIT ITEMS.	Dr.	Cr.
1	Docketing the Case and Filing the Record.....	5.00	
2	Entering 5 Appearances.....	1.25	
3	Entering 1 Continuance.....	.25	
4	Entering 4 Order.....	.80	
5	Filing 17 Papers.....	4.25	
6	Filing Briefs for Each Party Appearing (2)	10.00	
7	Filing Reply Brief of Appellee	5.00	
8	Filing		
9	Filing Argument		
10			
11	Transferring Cause on Printed Calendar (3)	3.00	
12	Drawing, Filing and Record- ing Decree or Judgment.....	1.65	
13			
14	Filing Petition for a Rehearing	5.00	
15			
16	Issuing		
17			
18			
19	Issuing Mandate, \$5.00; Costs and Copy, \$0.40.....	5.40	
20			
21	TOTAL MISCELLANEOUS COSTS	46.60	

22	Expense, Printing Record.....	259.25
23	Expense, Printing Addenda to Do.....	41.00

24 TOTAL OF DEBIT ITEMS..346.95

[23]

Credit

Item No.	CREDIT ITEMS.		
1	Deposited Account Misc. Costs R. E. Sloan.....		25.00
2	Addl. Deposited Account Misc. Costs R. E. Sloan.....		6.95
3	Addl. Deposited Account Misc. Costs A. Sutro.....		6.20
4	Addl. Deposited Account Misc. Costs Robinson & Robinson...		5.00
5	Expense, Printing Record R. E. Sloan	259.25	
6	Expense, Printing Addenda R. E. Sloan	41.00	
7	TOTAL OF CREDIT ITEMS..	343.40	
8	Balance, Costs Robinson & Robin- son	3.45	
	TOTALS.....	346.85	346.85

ITEMIZED BILL OF COSTS ALLOWED AND TAXED.

Item No.	Amount
1	Certified Cost of Transcript from Court Below:

2		
3	Deposit — Account Misc. Costs	5.00
4	Total Expense, Printing Record	
5		
6		
7	Attorney's Docket Fee	20.00
8	Balance Costs	3.45

TOTAL (Inserted in Body of Mandate)

TAXED AT 28.45

Attest: F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: No. 2876. United States Circuit Court of Appeals, for the Ninth Circuit. The Norma Mining Company vs. Hugh Mackay. Mandate. Filed Oct. 22, 1917, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy. [24]

*In the United States District Court for the District
of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

NORMA MINING COMPANY,

Defendant.

Motion for Order Setting Aside Sale, etc.

To the Honorable WILLIAM H. SAWTELLE,
Judge of the United States District Court for
the District of Arizona.

Comes now the Norma Mining Company, by its attorney, Richard E. Sloan, and moves the Court that the sale of the premises mentioned and described in the decree entered in the above-entitled cause on the 18th day of March, 1916, made by the Special Master named therein on the — day of —, 1916, be ordered set aside and said Master be directed to readvertise and to resell said premises in the manner and mode and as provided in said decree.

In support of said motion said defendant represents to the Court that more than one year has elapsed since the said sale, and that the conditions at the time of said sale were less favorable for the sale of mining properties of the kind and character of those included in said decree than at present; that said mining claims are of the class of silver-bearing mines and that during the last few months silver properties have come into demand, owing to the rapid and phenomenal rise in the price of silver; that the plaintiff was the purchaser at said sale and the price named by him was the amount of said judgment and costs; that the defendant believes that if a resale of the premises be had, as herein requested, it may interest purchasers who will bid for said property in competition with the plaintiff.

Respectfully,

_____. [25]

Service of a copy of within motion acknowledged this 25th day of October, 1917.

BAKER & BAKER.

[Endorsed]: Filed Oct. 26, 1917, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.
[26]

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY OF DATE APRIL 9th, 1918.

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Minutes of Court—April 9, 1918—Order Granting
Motion to Set Aside Order of Sale, etc.**

This cause coming on for hearing on the motion of defendant to set aside the sale of the premises mentioned in the decree of March 18th, 1916, and to resell same, A. C. Baker, Esquire, appearing on behalf of the plaintiff, and Richard E. Sloan, Esquire, appearing on behalf of the defendant, said motion is submitted to the Court, and having been duly considered by the Court, the same is by the Court sustained, with provision that the defendant pay Three Hundred Dollars within ten days to the clerk of this court or to plaintiff's counsel for the purpose of said resale. [27]

*In the District Court of the United States for the
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

NORMA MINING COMPANY,

Defendant.

**Order Directing Special Master to Resell Property,
etc.**

The above-named defendant having filed its motion to vacate and set aside the sale heretofore made by the Special Master appointed under the decree entered in said cause, and the Court on the 9th day of April, 1918, having granted said motion upon the condition that the defendant deposit with the clerk of the court the sum of Three Hundred (\$300) Dollars on or before April 19th, 1918, to cover the costs of such resale, and it now appearing that said defendant did, as required in said order, deposit said sum with the said clerk within said time,—

IT IS NOW ORDERED that the sale made under said decree by said Special Master on the 18th day of May, 1916, to be set aside, and said Special Master is ordered to resell the property in the manner and mode provided in said decree and according to the law.

WM. H. SAWTELLE,
Judge.

[Endorsed]: Filed April 27, 1918. Mose Drachman, Clerk. [28]

*In the District Court of the United States for the
District of Arizona.*

No. E.-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Master's Report of Sale.

The undersigned respectfully reports that under the decree made and entered in said cause on the 18th day of March, 1916, and the order of the Court, ordering a resale of said property, of date April 27, 1918; he did on the 12th day of June 1918, offer for sale the property mentioned in said decree after having duly advertised said sale in the "Mohave County Miner," a weekly newspaper published in the Town of Kingman, in the County of Mohave, said property was offered for sale at the courthouse door in the town of Kingman, County of Mohave, and at said sale the plaintiff, Hugh Mackay became the purchaser, he being the highest, best and last bidder at and for the sum of Twenty-seven Thousand Five Hundred and Seventy-four Dollars and Twenty-eight Cents (\$27,574.28).

That the Master incurred the following expenses in the execution of said Decree:

Publication of notice of sale.....	\$ 34.69
Expenses of Master in going to and returning from Kingman.....	\$ 86.80

\$121.49

That the plaintiff offers to pay any balance remaining due upon the expenses and the costs now due in said cause, and to credit his judgment with the remainder of his said bid.

The Master hereby reports his doings under said decree and order and asks that his compensation be fixed by the Court and that the sum of Three Hundred Dollars deposited by the defendant under the provisions of said order of April 27, 1918, be declared subject to the costs and expenses of the said sale, and that upon the payment by the [29] plaintiff of the remainder of said costs and expenses, if any, he be authorized to make and file with the Recorder of Mohave County, a certificate of purchase in favor of the plaintiff, and that upon the expiration of the statutory period, he be authorized to make, execute, and deliver, a deed conveying to plaintiff all the right, title and interest of the defendant in and to the property sold.

The undersigned attaches the affidavit of publication showing that said notice was published on May 11, May 18, May 25, June 1, and June 8, 1918.

Respectfully submitted,

EDWIN F. JONES.

PROOF OF PUBLICATION.

State of Arizona,
County of Mohave,—ss.

J. H. Smith, being first duly sworn, says: I am 30 years of age; that during the publication of the notice, as herein mentioned, I was and now am the manager of the "Mohave County Miner," a weekly newspaper published on Saturday of each and

every week at the town of Kingman, in said county.

That said newspaper was printed and published as aforesaid on the following dates, to wit: Saturday, May 11, 1918; Saturday, May 18, 1918; Saturday, May 25, 1918; Saturday, June 1, 1918; Saturday, June 8, 1918.

That the Special Master's sale of which the annexed clipping is a printed and true copy was printed and inserted in each and every copy of said newspaper printed and published on the dates aforesaid, and in the body of said newspaper and not in a supplement thereto.

J. H. SMITH.

Subscribed and sworn to before me this 12th day of June, 1918.

[Seal]

ANSON H. SMITH,
U. S. Commissioner. [30]

*In the District Court of the United States for the
District of Arizona.*

No. E.-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Notice of Resale by Special Master.

Under and by virtue of a decree made and entered in said cause on the 18th day of March, 1916, and of an order made and entered in said cause on the 27th day of April, 1918, the undersigned, as Special

Master, will offer for sale to the highest bidder for cash, at the courthouse door of Mohave County, in the town of Kingman, Mohave County, Arizona, between the legal hours of sale on Wednesday, the 12th day of June, 1918, all the right, title and interest which the defendant, The Norma Mining Company, have in and to the following described property lying in the county of Mohave, State of Arizona, to wit, the following patented mining claims situate, lying and being in the Indian Secret Mining District in the county of Mohave, State of Arizona, viz.:

The Putman	The Lone Star
The Bonita	The Goad Stick
The Monster	The Oversight
The Garfield Fraction	The Big Joshua
The Western View	The Ellington
The Desert Prospect	The Little Giant
The G. A. R. Fraction	The Orient
The Nora R.	The Rip Van Winkle
The Abe Lincoln	The Garfield
The Center	The Emma
The Prince Albert	The Junction
The Horn Silver	The W. Half of Hulda
The Norma	The Chief of the Hill
The Fraction Quartz	The Midway Extension
The Occident	The Grand Central
The Daisy Min. Claim	The Blind Goddess
The Review	The Norma Fraction
The Mountain Scenery	The Buckley
The Peer	The Lookout
The Acquarius	The Millsite

The Midway	The Schaefer's Treasure
The Squattum	The Nellie Blye
The African	The G. A. R.

—together with all the dips, spurs and angles and all the metals, ores, gold and silver-bearing quartz, rock and earth therein, the old dump now thereon, together with the mill and machinery therein, and the [31] different hoisting plants on the property.

Said property is sold to raise the amount due to the plaintiff for principal, interest, costs of suit, attorney's fees, and fees and expenses of sale, and is sold subject to all taxes and assessments against said property, said debt amounting to the sum of Twenty-two Thousand Nine Hundred and Fifty-eight Dollars and Nine Cents (\$22,958.09) with interest from March 18, 1916, the date of the decree.

Said sale shall be for cash and shall be free from all equity of redemption except the statutory right of redemption provided by the laws of the State of Arizona.

Dated May 4, 1918.

EDWIN F. JONES,
Special Master.

First insertion May 11—last June 8, 1918, up.

[Endorsed]: Filed July 8th, 1918. Mose Drachman, Clerk. [32]

*In the District Court of the United States for the
District of Arizona.*

No. E.-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Order Confirming Resale.

This cause coming on to be heard upon the report of the Master of the sale of the said property, and no exceptions or objections having been filed to said report which was filed in this court on the 7th day of July, 1918, and more than twenty days having elapsed since the filing of said report, it is ordered, adjudged and decreed:

1. That said report be and is hereby in all things, confirmed.

2. That the expenses of said sale, including the Master's expenses in going to and from the place of sale, is fixed at the sum of One Hundred and Twenty-one Dollars and Forty-nine cents (\$121.49).

3. That the compensation of the Master is fixed at the sum of Two Hundred and Fifty Dollars (\$250.00).

4. That the clerk of this court will retain, out of the money now in his hands the amount of clerk's costs due and remaining unpaid, and that after retaining such fees he pay to the Master, for his ex-

penses and compensation the remainder of the money now in his hands, and it appearing that the same will be insufficient to pay said compensation and expenses the plaintiff is hereby required to pay to the Master the balance so remaining unpaid.

5. That the Master, if requested so to do by the plaintiff shall prepare and file with the Recorder of Mohave County, a certificate of sale of the property mentioned in the decree, and that upon the expiration of the statutory period from the date of sale that the Master made, execute and deliver to the purchaser at said sale, a deed conveying to said purchaser all the right, title and interest of any of the parties to this suit in and to the property embraced in said [33] decree.

Done in open court this 23d day of September, 1918.

WM. H. SAWTELLE,
Judge.

[Endorsed]: Filed Sep. 23, 1918, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.
[34]

*In the District Court of the United States for the
District of Arizona.*

No. E.-33 (PHX.).

HUGH MACKAY,

Complainant,

vs.

THE NORMA MINING COMPANY,

Defendant.

Order Nisi Confirming Sale.

The report of Edwin F. Jones, heretofore appointed Special Master to make the sale heretofore ordered and decreed, having been duly filed, and it appearing therefrom that said Special Master duly struck off and sold as one parcel, and as an entirety, the whole of the properties of every sort and description of the Norma Mining Company, said defendant, and mentioned and described in the decree made and entered in said cause on the 18th day of March, 1916, for the sum of Twenty-seven Thousand Five Hundred and Seventy-four and Twenty-eight cents (\$27,574.28), to Hugh Mackay, the said complainant.

It is on motion of said complainant, Hugh Mackay, ordered that said report and sale be confirmed, unless cause to the contrary thereof be shown in eight (8) days after notice to the parties to the several bills of complaint in this cause, or their solicitors, of the filing of said report.

Dated: October 7, 1918.

WM. H. SAWTELLE,
Judge.

[Endorsed]: Filed Oct. 7/18. Mose Drachman,
Clerk. [35]

*In the District Court of the United States for the
District of Arizona.*

No. E.-33 (PHX.).

HUGH MACKAY,

Complainant,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Notice of Filing Special Master's Report of Sale of
Property, and Nisi Order Confirming the Sale.**

To the Defendant, The Norma Mining Company,
and Its Solicitor, Richard E. Sloan:

You will please take notice that the Report of the Special Master on the sale of the defendant's properties, in the above-entitled cause, was filed in this court on July 8th, 1918, a copy of which report is hereunto annexed, and marked Exhibit "A."

You will take further notice that the Court, on the 7th day of October, 1918, made an order Nisi confirming such sale, a copy of which said order is hereunto annexed, marked Exhibit "B," and that the complainant will move the Court in eight days after the service hereof upon you for a final order confirming said sale.

A. C. BAKER,

Attorney for Complainant.

(Exhibit "A").

*In the District Court of the United States for the
District of Arizona.*

No. E.-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

MASTER'S REPORT OF SALE.

The undersigned respectfully reports that under the decree made and entered in said cause on the 18th day of March, 1916, and [36] the order of the court, ordering a resale of said property, of date April 27, 1918, he did on the 12th day of June, 1918, offer for sale the property mentioned in said decree after having duly advertised said sale in the "Mohave County Miner," a weekly newspaper, published in the town of Kingman, in the County of Mohave, said property was offered for sale at the courthouse door in the town of Kingman, county of Mohave and at said sale the plaintiff, Hugh Mackay became the purchaser, he being the highest, best and last bidder at and for the sum of Twenty-seven Thousand Five Hundred and Seventy-four Dollars and Twenty-eight cents (\$27,574.28).

That the master incurred the following expenses in the execution of said Decree:

Publication of notice of sale	\$ 34.69
Expenses of Master in going to and returning from Kingman	86.80
	<hr/>
	\$121.49

That the plaintiff offers to pay any balance remaining due upon the expenses and the costs now due in said cause, and to credit his judgment with the remainder of his said bid.

The Master hereby reports his doings under said decree and order and asks that his compensation be fixed by the Court and that that sum of Three Hundred Dollars deposited by the defendant under the provisions of said Order of April 27, 1918, be declared subject to the costs and expenses of the said sale, and that upon the payment by the plaintiff of the remainder of said costs and expenses, if any, he be authorized to make and file with the Recorder of Mohave County, a certificate of purchase in favor of the plaintiff, and that upon the expiration of the statutory period, he be authorized to make, execute and deliver, a deed conveying to plaintiff all the right, title and interest of the defendant in and to the property sold.

The undersigned attaches the affidavit of publication showing that said notice was published on May 11th, May 18, May 25, June 1, and June 8, 1918.

Respectfully submitted,

EDWIN F. JONES. [37]

Proof of publication attached.

[Endorsed]: Filed July 8th, 1918. Mose Drachman, Clerk.

Exhibit "B."

*In the District Court of the United States for the
District of Arizona.*

No. E.-33 (PHX.).

HUGH MACKAY,

Complainant,

vs.

THE NORMA MINING COMPANY,

Defendant.

ORDER NISI CONFIRMING SALE.

The report of Edwin F. Jones, heretofore appointed Special Master to make the sale heretofore ordered and decreed, having been duly filed, and it appearing therefrom that said Special Master duly struck off and sold as one parcel, and as an entirety, the whole of the properties of every sort and description of the Norma Mining Company, said defendant, and mentioned and described in the decree made and entered in said cause on the 18th day of March, 1916, for the sum of Twenty-seven Thousand Five Hundred and Seventy-four and Twenty-eight cents (\$27,574.28), to Hugh Mackay, the said complainant.

It is on motion of said complainant, Hugh Mackay, ordered that said report and sale be confirmed, unless cause to the contrary thereof be shown in eight (8) days after notice to the parties to the several bills of complaint in this cause, or their colicitors, of the filing of said report.

Dated October 7, 1918.

WILLIAM H. SAWTELLE,

Judge. [38]

Copies of the within papers acknowledged this
7th day of Oct., 1918.

RICHARD E. SLOAN,

Atty. for Defendant.

[Endorsed]: Filed Oct. 7/18. Mose Drachman,
Clerk. [39]

*In the United States District Court for the District
of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

NORMA MINING COMPANY,

Defendant.

**Exceptions to and Motion to Set Aside Sale of
Property.**

To the Honorable WILLIAM H. SAWTELLE,
Judge of the United States District Court for
the District of Arizona.

Comes now the Norma Mining Company, by its
attorney, Richard E. Sloan, and moves the Court
that the sale of the premises mentioned and de-
scribed in the decree entered in the above-entitled
cause on the 18th day of March, 1916, made by the
Special Master named therein on the 12th day of
June, 1918, be ordered set aside and said Master be
directed to advertise and resell said premises in the

manner and mode as provided in said decree, and that said sale be made not earlier than six months from date hereof.

In support of said motion, said defendant represents to the court that the notice of said sale published in the "Mohave County Miner," a weekly newspaper published in the town of Kingman, county of Mohave, State of Arizona, did not give to the public sufficient notice of the time set for said sale in this, that said advertisement recited that the property mentioned in said decree would be offered for sale to the highest bidder for cash "between the legal hours of sale on Wednesday the 12th day of June, 1918."

That by said advertisement the public had no way of ascertaining at what hour in said day said property would be offered for sale; that said manner of advertising said sale was unfair for the reason that it did not give sufficient opportunity for open and competitive [40] bidding.

That said notice of sale did not describe the property to be sold, particularly as to the machinery and equipment located on said property. There was at the time set for said sale, and is now located on said property, and a part of the property sought to be sold, a large amount of very valuable machinery and equipment, which alone, defendant believes, is of the value of more than One Hundred Thousand (\$100,000) Dollars. That the said machinery and equipment was not described in said notice with sufficient certainty or definiteness to enable the public to ascertain therefrom any conception of the character

or value of said property, nor was it described in any manner whatsoever in said notice.

That the decree under which said Special Master sought to sell said property directed said Special Master to describe in the notice of sale the property sought to be sold.

That at the time said sale was made the public was being importuned and urged by the Federal Government to invest all surplus moneys in Government bonds and other war necessities, and the Federal Government at said time discouraged the organization and promotion of new enterprises not necessary to the conduct of the war, and as a result of this policy on the part of the Government, and the condition of the money market arising therefrom, it was at said time very difficult to interest anyone in the purchase of said property. That the price bid for said property, to wit, the sum of Twenty-seven Thousand Five Hundred and Seventy-four and Twenty-eight One Hundredths (\$27,574.28) Dollars, was a grossly inadequate price. That in support of defendant's claim that such price was inadequate, defendant presents herewith, the affidavit of Mr. A. Lefave, a man familiar with the character and value of said property and qualified by experience and training to testify as to the reasonable value thereof, which said affidavit fixes the value, in the year 1916, at a sum in excess of One Hundred Thousand (\$100,000) Dollars. That since the date of said affidavit the value of silver mining property, as well as the value of [41] all kinds of mining machinery and equipment has greatly increased.

That all the facts and circumstances hereinabove set forth had a tendency to cause said inadequacy of price. That by reason of the fact that the Federal Government is demanding that all surplus moneys on hand be invested in Government bonds and other necessary war purposes, and that this condition is likely to continue for at least six months, it is unfair and unjust to the defendant herein, that said property should be sold within six months therefrom.

That the plaintiff was the purchaser at said sale and the price named herein was the amount of said judgment and costs. That the defendant believes that if a resale of the premises be had at the time hereinabove mentioned, or subsequent thereto, it may interest purchasers who will bid for said property in competition with said plaintiff.

Respectfully,

RICHARD E. SLOAN,
Attorney for Defendant.

[Endorsed]: Received copy of within this 15th day of Oct., 1918.

A. C. BAKER.
By B. CHAMBERS.

*In the District Court of the United States for the
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

County of Maricopa,
State of Arizona,—ss.

A. Lafave, being first duly sworn, deposes and says that he resides at Clifton, State of Arizona; that he has been a resident of the State of Arizona for more than twenty years last past; that he is engaged in the business of mining and has been so engaged for the past [42] thirty-seven years; that he is acquainted with the property of the Norma Mining Company, being the same property described in the decree of foreclosure entered in the above-entitled cause, situated in the Indian Secret Mining District, county of Mohave, State of Arizona; that he at one time was Superintendent and in charge of the operations of the White Hills Mining & Milling Company, the predecessor in interest of The Norma Mining Company in the ownership of said property; that the mining property is of the class of property known as "gold and silver bearing"; that prior to and including the time when affiant was in charge of said property it had produced more than One Million Dollars, and as affiant is informed and believes, it has since produced a large sum in addition; that from affiant's knowledge of this property, and of mining properties generally, he is able to state with reasonable certainty that the reasonable market value of said property is in excess of One Hundred Thousand Dollars.

A. LAFAVE.

Subscribed and sworn to before me this 20th day of May, 1916.

[Seal]

O. T. RICHEY,
Notary Public.

My commission expires April 25th, 1918.

[Endorsed]: Filed Oct. 15, 1918, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.

[43]

In the United States District Court for the District of Arizona.

No. E.-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

NORMA MINING COMPANY,

Defendant.

Order Confirming Sale.

This cause come on to be heard on the Report of the Special Master of Sale, made pursuant to order of April 27, 1918, and the exceptions of the defendant thereto and its motion for resale of the properties mentioned in the decree, A. C. Baker appearing for the plaintiff, and R. E. Sloan, Esq., appearing for the defendant, and after hearing the matter and considering the same,—

IT IS HEREBY ORDERED, ADJUDGED AND DECREE that the exceptions of the defendant to the Special Master's Report of Sale, and its motion for resale, are hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Report of the Special Master of Sale is in all things confirmed and approved.

Dated October 19, 1918.

WM. H. SAWTELLE,
Judge.

Receipt of copy of the within instrument acknowledged this 19th day of Oct., 1918.

R. E. SLOAN,
Atty. for Defendant.

[Endorsed]: Filed Oct. 19, 1918. Mose Drachman, Clerk. [44]

In the United States District Court for the District of Arizona.

HUGH MACKAY,

Plaintiff,

vs.

NORMA MINING COMPANY,

Defendant.

Order Discharging Cost Bond.

In this case the plaintiff, Hugh Mackay, under the order of the Court, having filed a cost bond in the sum of \$300, with H. D. Marshall and M. C. McDougal, as sureties, the said bond being conditioned that plaintiff would pay all costs that might be recovered against him in said action by the defendant, and the said plaintiff himself having recovered judgment in the case against the defendant, and all costs

in said case being fully paid, and the said case being finally disposed of,

NOW, IT IS ORDERED that said cost bond be discharged, and that the principal and sureties on said bond be and they are hereby released from all liability thereon.

Dated December 2d, 1918.

WM. H. SAWTELLE,
Judge.

[Endorsed]: Filed Dec. 2, 1918. Mose Drachman, Clerk. [45]

*In the District Court of the United States for the
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Petition for Appeal.

To the Honorable W. B. GILBERT, Judge of the Circuit Court of Appeals.

The above-named, The Norma Mining Company, feeling aggrieved by the order confirming sale rendered and entered in the above-entitled cause on the 19th day of October, 1918, does hereby appeal from said order to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and it prays that its appeal be allowed and that citation be issued as

provided by law and that a transcript of the record proceedings and documents, upon which said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such court in such cases made and provided; and your petitioner further prays that the proper order relating to the required security to be required of it, be made.

Dec. 28, 1918.

GRANT H. SMITH,
Solicitor and Counsel for Appellant.

[Endorsed]: Filed Mar. 25, 1919, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.

[46]

*In the District Court of the United States for the
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Assignment of Errors.

Now comes the defendant in the above-entitled cause, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal of the above-entitled cause from the order confirming sale, made by the United States District Court, for the District of Arizona, on the 19th day of October, 1918.

1.

That the United States District Court, for the District of Arizona, erred upon the hearing of the motion to confirm said sale in overruling defendant's motion to set aside said sale, as follows: Under the exceptions to said sale, filed by the defendant, said defendant represented to the Court that the notice of said sale published in the "Mohave County Miner," a weekly newspaper published in the town of Kingman, county of Mohave, State of Arizona, did not give sufficient notice of the time and place of said sale. In support of said contention, the defendant showed by the affidavit of publication of said notice that the said notice failed to fix any hour during the 12th day of June, 1918, the day said property was advertised to be sold, at which said sale would be made.

2.

That the said District Court, upon the hearing of said motion, erred in overruling defendant's motion to set aside said sale as follows: That in support of said motion to set aside said sale, [47] the defendant showed to said Court that the notice of sale published by the plaintiff, as aforesaid, did not describe the property to be sold with sufficient certainty or definiteness to enable the public to ascertain therefrom the character and value of said property, and that the machinery and equipment thereon was not described in any manner whatever in said notice.

3.

That the said District Court, upon the hearing of said motion, erred in overruling defendant's motion

to set aside said sale, as follows: That in support of said motion to set aside said sale, the defendant showed to the said Court that the price bid for said property, to wit, the sum of \$27,574.28 was grossly inadequate and that said price did not exceed twenty-five per cent of the actual value of said property, and that the actual value of said property was greatly in excess of One Hundred Thousand Dollars.

4.

That the said District Court, upon the hearing of said motion, erred in overruling defendant's motion to set aside said sale, as follows: That the defendant, in support of said motion, showed to said Court that at the time said sale was made the public was being importuned and urged by the Federal Government to invest all surplus moneys in Government bonds and other war necessities and the Federal Government at said time discouraged the organization and promotion of new enterprises not necessary to the conduct of the war. That as a result of said policy on the part of the Government, and the condition of the money market arising therefrom, it was at said time very difficult to interest anyone in the purchase of said property.

5.

That the United States District Court, for the District of Arizona, erred in overruling defendant's motion to set aside the sale herein. [48]

6.

That the United States District Court, for the District of Arizona, erred in entering its order confirming the sale herein.

7.

That the United States District Court, for the District of Arizona, erred in entering its order confirming a sale herein, because it affirmatively appears from the record herein that said sale was prematurely made under the order of sale and the rules of this court.

WHEREFORE, appellant prays that said order confirming sale be reversed and that said District Court for the District of Arizona be ordered to grant a resale of said property as prescribed by law.

Dec. 28, 1918.

GRANT H. SMITH,
Attorney for Defendant.

[Endorsed]: Filed Mar. 25, 1919, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.
[49]

*In the District Court of the United States for the
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Order for the Allowance of an Appeal.

Upon the presentation of the petition of counsel for appellant, asking for the allowance of an appeal from the final order entered herein on October 19, 1918, in favor of plaintiff and against defendant, and

from an order made and entered herein on October 19, 1918, denying the defendant's motion to vacate and set aside said order,—

IT IS ORDERED that such appeal be, and the same is hereby, allowed. Appellant will file a bond on appeal in the sum of \$250 (Two Hundred and Fifty Dollars).

Dated this 28th day of December, 1918.

Bond to be filed within 10 days from date hereof.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: Filed Mar. 25, 1919, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.

[50]

*In the District Court of the United States for the
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Order Extending Time to January 15, 1919, to File
Bond on Appeal.**

IT IS ORDERED that the time of the defendant in the above-entitled cause, to file a bond on appeal,
15th

be extended until January ~~20~~, 1919.

Dated January 7, 1919.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: Filed Mar. 25, 1919, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.
[51]

*In the District Court of the United States for the
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Order Extending Time to January 28, 1919, to File
Bond on Appeal.**

IT IS ORDERED that the time of the defendant in the above-entitled cause, to file a bond on appeal, be extended until January 28, 1919.

Dated January 14, 1919.

W. H. HUNT,
Circuit Judge.

[Endorsed]: Filed Mar. 25, 1919, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.
[52]

*In the District Court of the United States for the
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Cost Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, The Norma Mining Company, a corporation, as principal, and Thomas J. Curran and C. S. Boden, as sureties, are held and firmly bound unto Hugh Mackay, the above-named plaintiff, in the sum of Two Hundred and Fifty Dollars, lawful money of the United States, to be paid to him and unto his heirs, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 7th day of January, 1919.

Whereas, the above-named, The Norma Mining Company, has prosecuted an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the decree of the District Court for the District of Arizona in the above-entitled cause.

Now, therefore, the condition of this obligation is such that if the above-named, The Norma Mining Company, shall prosecute its said appeal to effect and shall answer all damages and costs if it fail to make its plea good, then this obligation shall be void; otherwise to remain in full force and effect. [53]

[Seal] THE NORMA MINING COMPANY,
By R. T. ROOT,
President.

THOMAS J. CURRAN.
C. S. BODEN.

State of California,
City and County of San Francisco,—ss.

On this seventh day of January, 1919, personally appeared before me Thomas J. Curran, of Oakland, Alameda Co., and C. S. Boden, of Palo Alto, Santa Clara Co., known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, each of whom separately acknowledged to me that he executed the same as his own free act and deed for the uses and purposes therein set forth.

Thomas J. Curran C. S. Boden

J. F. McC NP. And the said Curran and Boden, being by me duly sworn, separately, says that he is a resident and householder of the City and of Oakland, Alameda Co. Palo Alto, Santa Clara Co.

J. F. McC NP. ~~County of San Francisco~~, State of California, and that he is worth the sum of \$250 over and above his just debts and liabilities, exclusive of property exempt from execution.

THOMAS J. CURRAN.

C. S. BODEN.

Subscribed and sworn to before me this 7th day of January, A. D. 1919.

[Notarial Seal] JAMES F. McCUE,
Notary Public in and for the City and County of San Francisco, State of California.

Above bond approved Jany. 14, 1919.

WM. H. HUNT,
Judge.

[Endorsed]: Filed Mar. 25, 1919, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.
[54]

*In the District Court of the United States for the
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

Praeceptum for Transcript of Record.

To the Clerk of said Court:

Sir: I herewith file with you in the above-entitled action petition for appeal, assignment of errors, order for the allowance of an appeal, two orders extending time in which to file bond on appeal, and bond on appeal, duly approved by Judge William H. Hunt, Circuit Judge, and citation on appeal.

You will please prepare a record on appeal, and include therein the bill of complaint, the amended answer, and cross-bill of The Norma Mining Company, the decree, the order of the Circuit Court of Appeal, affirming the judgment of the lower court on appeal, and all documents and papers filed or otherwise placed of record in the clerk's office since the filing of the remittitur on appeal. Also copies of all minute orders appearing on the clerk's records in connection with said case since the remittitur on appeal

was filed. Also copies of the instruments herewith filed in your office.

GRANT H. SMITH,
Attorney for Defendant.

[Endorsed]: Filed Mar. 25, 1919, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.
[55]

*In the United States District Court for the District
of Arizona.*

No. E.-33 (PHOENIX).

HUGH MACKAY,

Plaintiff (Appellee).

vs.

THE NORMA MINING COMPANY,

Defendant (Appellant).

**Certificate of Clerk of United States District Court
to Transcript of Record.**

United States of America,
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing fifty-five (55) pages, numbered from one (1) to fifty-five (55), inclusive, constitutes a full true, correct and complete transcript of so much of the record, papers and other proceedings in the above-entitled cause as are necessary to the hearing of said cause, and as are specified and designated in the praecipe filed herein by the above-

named defendant-appellant, as appears from the original records and files thereof now remaining in my custody and control.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the defendant-appellant for the preparation and certification of the transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [56]

Clerk's fee for preparing transcript of record—140 folios at 10 cents per folio.....	\$14.00
Certificate of Clerk to transcript of record—	
4 folios at 15 cents per folio.....	.60
Seal affixed to said Certificate.....	.20
	<hr/>
Total.....	\$14.80

I hereby certify that the above cost for preparing and certifying record, amounting to Fourteen and 80/100 Dollars, (\$14.80), has been paid to me by Grant H. Smith of counsel for defendant-appellant.

I further certify that I hereto attach and herewith transmit the original citation in this cause.

WITNESS my hand and the seal of said District Court, affixed at my office in Phoenix, Arizona, this 26th day of March, A. D. 1919.

[Seal]

MOSE DRACHMAN,
Clerk.

By Nat. T. McKee.

Deputy Clerk. [57]

Citation on Appeal.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Hugh Mackay, Plaintiff, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, made by the undersigned Circuit Judge for the Ninth Circuit, District of Arizona, wherein the Norma Mining Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM H. HUNT, United States Circuit Judge for the Ninth Judicial Circuit, this 28th day of December, A. D. 1918.

WM. H. HUNT,

United States Circuit Judge. [58]

United States of America,—ss.

On this — day of January, in the year of our Lord one thousand nine hundred and nineteen, personally appeared before me, —, the subscriber, and makes oath that he delivered a true copy of the within citation to Messrs. A. C. Baker and A. B. Baker, attorneys for plaintiff in the above-entitled action, on the — day of January, 1919.

Subscribed and sworn to before me at ———, this
—— day of January, A. D. 1919.

Service of the within citation is hereby acknowledged this 18th day of January, 1919.

BAKER & BAKER,
Attorneys for Plaintiff,
By L. L. PIERSON.

[Endorsed]: No. ——. United States District Court for the District of Arizona. The Norma Mining Company, Appellant, vs. Hugh Mackay, Appellee. Citation on Appeal. Filed Mar. 25, 1919, at — M. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.

[Endorsed]: No. 3319. United States Circuit Court of Appeals for the Ninth Circuit. The Norma Mining Company, a Corporation, Appellant, vs Hugh Mackay, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed March 28, 1919.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien.
Deputy Clerk.

Plaintiff's Exhibit "B" for Identification—Realty Mortgage, Between The Norma Mining Company and Hugh Mackay, August 2, 1913.

REALTY MORTGAGE.

Know All Men by These Presents:

That the Norma Mining Company, a corporation duly organized and existing under the laws of the State of Arizona, Mortgagor, of ——— County of ——— State of Arizona, for and in consideration of Sixteen Thousand (\$16,000) Dollars, to it in hand paid by Hugh Mackay, Mortgagee, has granted, sold and conveyed, and by these presents do grant, sell and convey unto the said Hugh MacKay all that certain premises described as follows, to wit: The following Mining Claims situate, lying and being in the Indian Secret Mining District, in the County of Mohave, and State of Arizona, viz.: The Putman, The Review, The West Half of The Hulda, The Bonita, The Mountain Scenery, The Chief of the Hill, The Monster, The Peer, The Midway Extension, The Garfield Fraction, The Acquarius, The Grand Central, The Western View, The Lone Star, The Blind Goddess, The Desert Prospect, The Goadstick, The Norma Fraction, The G. A. R. Fraction, The Oversight, The Buckley, The Nora R., The Big Joshua, The Lookout, The Abe Lincoln, The Ellington, The Hillside, The Center, The Little Giant, The Midway, The Prince Albert, The Orient, The Squattum, The Horn Silver, The Rip Van Winkle, The African, The Norma, The Garfield, The Schaefer's Treasure, The Fraction Quartz, The

Emma, The Nellie Blye, The Occident, The Junction, The G. R. A., and The Daisy Mining Claims, together with the mill and machinery therein and the different hoisting plants upon the property. To have and to hold the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Hugh Mackay, Mortgagee, his heirs and assigns forever.

This Conveyance is intended as a Mortgage to secure the payment of one certain Promissory Note, given by the said Mortgagor of date August the second, A. D. 1913, which said note is in words and figures following, to wit:

\$16,000.

Denver, Colo., Aug. 2d. 1913.

Four months after date The Norma Mining Co. promises to pay to the order of Hugh Mackay Sixteen Thousand Dollars at Denver, Colo.

Value received with interest at six per cent per annum.

THE NORMA MINING CO.

By R. T. ROOT,

President.

In executing this instrument the Mortgagor reserves the right to mine ore and to operate this property in the usual and customary way of mining and operating such property, taking and using any and all proceeds, incomes and profits from said property as fully and to the same extent as if this indenture had not been made, until the property may be sold and conveyed under this mortgage by reason of default of the payment provided herein, in event that such default should occur.

This instrument is hereby executed and delivered by R. T. Root, as president, by order of the Board of Directors of this company and said execution and delivery is duly ratified by a meeting of the stockholders of the company at which all shares of stock issued was represented and unanimously voted in favor thereof.

And this instrument shall be void if said Promissory Note, principal and interest be well and truly paid when due, according to the tenor and effect thereof. But it is distinctly understood and agreed that if the interest on said Promissory Note, or the principal thereon, shall not be punctually paid when the same shall become due, as in said Promissory Note mentioned, then, and in such case, the principal sum of said Note and the interest thereon shall be deemed and taken to be wholly due and payable, and proceedings may forthwith be had by the said Mortgagee his heirs, executors, administrators and assigns, for the recovery of the same, either by suit on said Note or on this Mortgage and Note: and in any suit or other proceedings that may be had for the recovery of the said principal sum and interest thereon, it shall and may be lawful for the said Mortgagee his heirs, executors, administrators or assigns, to include in the judgment that may be recovered, attorneys fees not exceeding — per cent thereon upon the amount found due the plaintiff on said Note and this Mortgage, or in case of settlement after suit brought, but before judgment rendered, then — per cent on amount found due at the time of settlement, as well as all payments that

the said Mortgagee heirs, executors, administrators or assigns may be obliged to make for — security, or on account of any taxes, charges, incumbrances or assessments whatsoever on the said premises, legally laid or made thereon.

Executed this second day of August, A. D. 1913.

THE NORMA MINING COMPANY. [Seal]
[Corporate Seal] By R. T. ROOT,
President.

Signed, sealed and delivered in the presence of
J. M. CLEMENTS.

State of California,
County of Los Angeles,—ss.

On this 2d day of August, A. D. 1913, before me, Ina Evershed, a notary public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared R. T. Root known to me to be the President of the Norma Mining Company, the Corporation that executed the within Instrument, known to me to be the person who executed the within Instrument, on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same as its free act and deed for the purposes therein expressed and that the same was by him voluntarily executed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] INA EVERSHED,
Notary Public in and for said County, State of California.

[Endorsed]; No. —. Realty Mortgage. The Norma Mining Company to Hugh Mackay. Dated ———, 189—. Filed and recorded at request of Robinson and Robinson, August 29th, A. D. 1914, at 9 o'clock A. M. Book 4 of Mortgages, pages 172, 173. J. W. Morgan, County Recorder. Marked Plff. Ex. "B" for identification. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E.-6—Prescott. Hugh MacKey vs. Norma Mining Co.

**Plaintiff's Exhibit "E"—Mortgage, March 31, 1914,
Between The Norma Mining Company and
Hugh Mackay.**

This Indenture, made the thirty-first day of March in the year one thousand nine hundred and fourteen between THE NORMA MINING COMPANY, a corporation duly organized and existing under the laws of the State of Arizona, party of the first part, and HUGH MACKAY, of the City and County of Denver, State of Colorado, party of the second part:

Whereas, the said NORMA MINING COMPANY, party of the first part, is justly indebted to the said party of the second part, in the sum of Five Thousand (\$5,000) Dollars, lawful money of the United States, secured to be paid by two notes or obligation, bearing even date herewith, conditioned for the payment of the said sum of Five Thousand (\$5,000) Dollars, one note for Fifteen Hundred (\$1,500) Dollars and one note for Thirty-five Hundred (3,500) Dollars, payable on or before

May 1st, 1914, with interest at the rate of seven per cent (7%) per annum.

It being expressly agreed, that the whole of the said principal sum shall become due after default in the payment of interest, taxes or assessments, as hereinafter provided.

Now this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar paid by the said party of the second part, the receipt of which is hereby acknowledged, do hereby grant and release unto the said party of the second part, and to his heirs and assigns forever, All the following described patented mining claims, situate, lying and being in the County of Mohave and State of Arizona, to wit: in Indian Secret Mining District in said Mohave County, Arizona, viz: The Putman, the Review, the West Half of the Hulda, the Bonita, the Mountain Scenery, the Chief of the Hill, the Monster, the Peer, the Midway Extension, the Garfield Fraction, the Acuarins, the Grand Central, the Western View, the Lone Star, the Blind Goddess, the Desert Prospect, the Goadstick, the Norma Fraction, the G. A. R. Fraction, the Oversight, the Buckley, the Nora R., the Big Joshua, the Lookout, the Abe Lincoln, the Ellington, the Hillside, the Center, the Little Giant, the Midway, the Prince Albert, the Orient, the Squattum, the Horn Silver, the Rip Van Winkle, the African, the Norma, the Garfield, the Schaefer's Treasure,

the Fraction Quartz, the Emma, the Nellie Blye, the Occident, the Junction, the G. A. R., and the Daisy Mining Claim; together with all the dips, spurs and angles, and all the metals, ores, gold and silver bearing quartz, rock and earth therein, the old dump now thereon, and together with the mill and machinery therein and the different hoisting plants on the property.

Until default shall be made in payments of principal, interest, or some of them, or until defaults shall be made in respect to something herein required to be done, performed or kept by said party of the first part, and until the property herein conveyed shall have been sold and conveyed to said party of second part or his assigns or other purchaser by reason of such default, the said party of the first part shall be suffered and permitted to possess, operate, manage, lease, use and enjoy the said property hereby conveyed, and every part and parcel thereof, with the full right and privilege of developing, mining, breaking down, extracting, milling, removing, selling and disposing of any and all ores and products of said property, and of taking and using any and all proceeds, rents, royalties, products, incomes or profits from the said property as fully and to the same extent as if this indenture had not been made.

The execution of this mortgage was duly authorized by a meeting of the stockholders of said The Norma Mining Company at which meeting all of the shares issued and outstanding were present or represented and voted in favor of a resolution

authorizing the execution and delivery hereof, and was also authorized by a resolution of its Board of Directors duly adopted by unanimous vote at a meeting at which all of the directors of said Company were present.

Together with the appurtenances, and all the estate and rights of the party of the first part, in and to the said premises.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever.

There is a mortgage by aforesaid Grantor to aforesaid Grantee on said property for Sixteen Thousand (\$16,000) Dollars, and some taxes, all of which the Grantor will pay.

Provided always, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine, and be void.

And the said party of the first part covenants with the party of the second part as follows:

First.—That the party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises herein described, according to law.

Second.—That the said party of the first part will

execute any further necessary assurance of the title to said premises and will forever warrant said title.

Thirs.—That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

Fourth.—And it is hereby expressly agreed that the whole of said principal sum shall become due and payable as provided in said notes.
at the option of the said party of the second part after default in the payment of interest for ——— days; or after default in the payment of any taxes or assess-
on
ment for ——— days after notice and demand.

In Witness Whereof, the said party of the first part, The Norma Mining Company, has hereunto caused these presents to be signed by its President and attested by its Secretary and the seal of said Company to be hereto affixed this thirty-first day of March, A. D. 1914.

THE NORMA MINING COMPANY. (Seal)

By R. T. ROOT, (Seal)

President.

[Corporate Seal]

W. W. ROOT,

Secretary.

State of New York,
County of New York,—ss.

Before me, Geo. F. Brelsford, a Notary Public, in and for said County and State, on this day personally appeared R. T. Root, known to me to be the President of The Norma Mining Company, the Corporation described in the foregoing instrument, and known to me to be the person whose name is subscribed to the foregoing instrument as President of

said Company, and, as such Officer, acknowledged to me that he executed the said instrument for said Corporation for the purpose and consideration therein expressed, as the free act and deed of said Corporation and that it was by him voluntarily executed.

Given under my hand and seal of office this 31st day of March, A. D. 1914.

My commission expires March 30, 1916.

[Notarial Seal] GEO. F. BRELSFORD,
Notary Public New York County, #239, N. Y.
Register No. 6230.

[Endorsed]: The Norma Mining Company to Hugh Mackay. Mortgage. Filed and recorded at request of Robinson and Robinson August 29th, A. D. 1914, at 9 o'clock A. M., in Book 4 of Mortgages, pages 170 et seq., Records of Mohave County, Arizona. J. W. Morgan, County Recorder. Marked Plff. Ex. "E" for Identification. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6—Prescott. Hugh Mackey vs. Norma Mining Co.

Certificate of Clerk U. S. District Court to Plaintiff's Exhibits "B" and "E."

United States of America,
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing eight and a fraction typewritten pages are a full, true and complete copy of Plaintiff's Exhibits "B" and "E" filed in this office

in the case of Hugh Mackay, Plaintiff, vs. The Norma Mining Company, Defendant, originally No. E.-6 (Prescott), No. E.-33 (Phoenix), and now on appeal to the Circuit Court of Appeals for the Ninth Circuit, as the same appear from the original exhibits now on file and remaining in my office.

WITNESS my hand and the seal of said court affixed at my office in Phoenix, Arizona, this 4th day of April, A. D. 1919.

[Seal]

MOSE DRACHMAN,
Clerk.

By Nat. T. McKee,
Deputy Clerk.

[Endorsed]: In the United States District Court for the District of Arizona. Certified Copies of Exhibits "B" and "E" in the Case of Hugh Mackay, Plaintiff, vs. The Norma Mining Company, Defendant. No. E.-33—(Phoenix).

No. 3319. United States Circuit Court of Appeals for the Ninth Circuit. Norma Mining Company vs. Hugh Mackay. Certified Copy of Plaintiff's Exhibits "B" and "E." Filed Apr. 7, 1919. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

*In the United States Circuit Court of Appeals in
and for the Ninth Circuit.*

THE NORMA MINING COMPANY,

Appellant,

vs.

HUGH MACKAY,

Appellee.

**Order Extending Time to and Including April 5,
1919, to Prepare Record on Appeal.**

Upon the request of the Clerk of the United States District Court, for the District of Arizona, and good cause therefor appearing,—

IT IS HEREBY ORDERED that the time of the appellant to file the transcript of record and docket the above-entitled cause in this court be, and the same is hereby, extended to and including April 5th

~~25th~~, 1919; and that the time to file the bond heretofore approved be, and the same is hereby, extended

5th
to and including April ~~10th~~, 1919.

Dated March 25, 1919.

W. H. HUNT,

United States Circuit Judge.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, in and for the Ninth Circuit. The Norma Mining Company, Appellant, vs. Hugh Mackay, Appellee. Extension of Time to Prepare Record on Appeal. Filed Mar. 25, 1919. F. D. Monckton, Clerk. Re-filed Mar. 28, 1919. F. D. Monckton, Clerk.

